

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

United States of America,	)	
	)	
Plaintiff,	)	Case No. 1:02-CR-22
	)	
vs.	)	
	)	
Samuel A. Ashley, Jr.,	)	
	)	
Defendant.	)	

O R D E R

This matter is before the Court on Defendant Samuel A. Ashley's motion to correct clerical mistake pursuant to Rule 60(a) of the Federal Rules of Civil Procedure. (Doc. No. 152). In his motion, Defendant argues that the sentencing court used the wrong base offense level to calculate his sentence under the Sentencing Guidelines. Therefore, properly construed, Defendant's motion clearly is a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Defendant has already filed one § 2255 petition which the Court has denied. See Doc. No. 134. Accordingly, Defendant's motion is an improper attempt to file a second or successive § 2255 petition.

**IT IS THEREFORE ORDERED:**

1. Petitioner's motion (Doc. No. 152), properly construed as a motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255, is **TRANSFERRED** pursuant to 28 U.S.C. § 1631 to the United States Court of Appeals for the Sixth Circuit for consideration of whether the District Court may review the motion in accordance with 28 U.S.C. §§ 2244(b) and 2255.

2. A certificate of appealability shall not issue on the matters raised herein or those resolved in the prior Order of this Court (Doc. No. 134). See 28 U.S.C.A. § 2253(c); Fed. R. App. P.22(b). Petitioner remains free to request issuance of the certificate of appealability from the Court of Appeals. Id.

3. The Court certifies pursuant to 28 U.S.C.A. § 1915(a)(3) that an appeal of this Order would not be taken in good faith, and therefore **DENIES** Petitioner leave to appeal in forma pauperis. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

Date December 14, 2006

s/Sandra S. Beckwith  
Sandra S. Beckwith, Chief Judge  
United States District Court